

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WOLFGANG RUST, and BOBBY
CONN,

Plaintiffs,

v.

NEBRASKA DEPARTMENT OF
CORRECTIONAL SERVICES
RELIGION STUDY COMMITTEE, ET
AL.,

Defendants.

CASE NO. 4:08CV3185

MEMORANDUM
AND ORDER

This matter is before the court on Plaintiffs' Motion for Leave to Amend Complaint. (Filing No. [35](#).) Defendants did not oppose the Motion and the time in which to do so has passed. [Rule 15\(a\)](#) of the Federal Rules of Civil Procedure provides that leave to amend "shall be freely given when justice so requires." The applicable standard is summarized in [Foman v. Davis, 371 U.S. 178, 182 \(1962\)](#), which states:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claims on the merits. In the absence of any apparent reason-such as undue delay, bad faith or dilatory motive on the part of the movant, ... undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc.-the leave sought should, as the rules require, be "freely given."

[Id.](#)

The court has carefully reviewed the proposed Amended Complaint and finds that amendment would not be futile and is not made in bad faith. Again, Defendants do not oppose Plaintiff's Motion to Amend. Further, although the parties are currently engaging in discovery and a Motion for Summary Judgment is pending, there does not appear to be any new claims or Defendants in the proposed Amended Complaint which would cause

additional discovery to be undertaken. The Motion to Amend Complaint is therefore granted. Further, in accordance with [NECivR 15.1\(b\)](#), the court will consider the amended pleading as superseding, rather than as supplemental to, the original Complaint.

IT IS THEREFORE ORDERED that:

1. Plaintiffs' Motion for Leave to Amend Complaint (Filing No. [35](#)) is granted; and
2. The Clerk of the court is directed to file the proposed Amended Complaint as a separate document in this matter. (See Filing No. [35](#) at CM/ECF pp. 4-74.)

DATED this 29th day of June, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge